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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 Ryan Smith, individually and on behalf of
12 similarly situated employees,

13 Plaintiff,

14 v.

15 Superior Farms,

16 Defendant.
17

No. 2:20-cv-01778-KJM-DB

ORDER

18
19 Ryan Smith alleges his former employer, Superior Farms, “altered records” of the hours
20 he and other employees worked “so that the total number of hours they worked was reduced, and
21 so that it appeared that employees took their breaks as required by law even when they were not
22 able to timely take meal breaks.” Compl. ¶ 1, ECF No. 1. He filed this complaint on behalf of a
23 putative class of former employees, asserting claims under California law and the federal Fair
24 Labor Standards Act. *See generally id.*

25 In Smith’s fourth claim, he alleges Superior Farms violated California Labor Code § 204.
26 *Id.* ¶¶ 41–45. With a few exceptions not relevant here, section 204 requires wages to be paid
27 “twice during each calendar month, on days designated in advance by the employer as the regular
28 paydays.” Cal. Lab. Code § 204(a). Superior Farms moves to dismiss this fourth claim. It argues

1 section 204 does not guarantee any right to wages, but rather only that wages be paid on time.
2 See Mot. Dismiss at 7–9, ECF No. 5-1. Smith does not oppose the motion. See Joint Stmt. at 3,
3 ECF No. 7. The matter was submitted without a hearing by minute order. ECF No. 8.

4 Superior Farms is correct: “Section 204 requires the payment of wages in a timely
5 manner; it does not provide a right to wages.” *Johnson v. Hewlett-Packard Co.*, 809 F. Supp. 2d
6 1114, 1136 (N.D. Cal. 2011), *aff’d*, 546 F. App’x 613 (9th Cir. 2013). Because the complaint
7 does not allege wages were paid late, it does not state a claim under section 204.

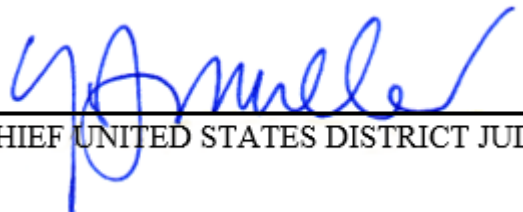
8 Claim four is **dismissed with leave to amend**. See *Sonoma Cty. Ass’n of Retired Emps. v.*
9 *Sonoma Cty.*, 708 F.3d 1109, 1117 (9th Cir. 2013) (“Courts may decline to grant leave to amend
10 only if there is strong evidence of ‘undue delay, bad faith or dilatory motive on the part of the
11 movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice
12 to the opposing party by virtue of allowance of the amendment, [or] futility of amendment, etc.’”
13 (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962))).

14 If Smith elects to amend his complaint, and if amendment is possible within the confines
15 of Rule 11, the amended complaint must be filed **no later than fourteen days before the status**
16 **(pretrial scheduling) conference**, which is currently set for February 25, 2021. Minute Order,
17 ECF No. 8.

18 This order resolves ECF No. 5.

19 IT IS SO ORDERED.

20 DATED: December 15, 2020.



CHIEF UNITED STATES DISTRICT JUDGE